(1) Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

APRIL TERM, 2002

WILSON M. KRUEGER, JR.
PRO SE
Petitioner,

vs.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILSON M. KRUEGER, JR.
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QUESTIONS PRESENTED

According to Statistics the plaintiff has about two years to live (because of the action of the VA) and will not have another chance to file this case before his death, therefore the plaintiff needs help from this court.

1) Was the plaintiff's answer to Judge Michel question on timeliness, sufficient for "service" to the Federal Circuit Court (FCC) and Department of Justice, since the answer foretold the manipulation the VA was presenting to the FCC and Department of Justice?

2) Is the VA guilty of judicial malfeasance by violating Constitutional Amendments 5,14; Right to Life and Due Process Clauses, various other USC's, CFR's and court procedures condemning the plaintiff to a painful life followed by a premature "Wrongful Death" and was the VA, (which in its capacity as a guardian of veterans' rights) act unreasonably, arbitrarily or capriciously by violating the plaintiff's constitutional rights mandated by congress?

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APPENDIX A
Order of appeal dismissed Federal Circuit Court Case No. 01-7067.
Order of Federal Circuit Court Case No. 01-7067 dismissed.
Order of Federal Circuit Court Case No. 00-7156 writ of mandamus for plaintiff. (see Appendix B) Judge Michel, who ordered on 29 AUG 2000 (Lodge 20), the plaintiff to explain timeliness, accepted the BVA Case No. 98-11982. Plaintiff answered Judge Michel's request on 17 SEP 2000 (Lodge 21) with service to FCC and Department of Justice. After the CAVC refused plaintiff's case, they then accepted the same case and ordered the plaintiff to pay docket fees to CAVC. At this time if the plaintiff had paid docket fees to CAVC, CAVC would have said the plaintiff had two cases going on at the same time. If the plaintiff refused to pay docket fees then CAVC would state the plaintiff was untimely with new evidence. The FCC accepted CAVC's "story" after the plaintiff had shown the CAVC committed perjury several times.

APPENDIX B
(1) CAVC refused to accept case from BVA as untimely and would consider no new evidence.
(2) CAVC accepted BVA Case No. 98-11982 and renamed it CAVC 01-1 (notice date of 25 APR 2001), therefore, it had to be after Judge Michel's decision.

APPENDIX C
BVA Case No. 98-11982 refused to change date In-Accordance-With (IAW) 38 CFR 3.400 and amount of disability Dr. LODGE 2 Chavez's letter.

APPENDIX D
Pl.Exh. No. 1 BVA Decision 18 APR 2000 98-11982
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PETITION FOR WRIT OF CENTIORARI

Petitioner Wilson M. Krueger, Jr. respectfully prays that writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts. The opinion of the United States Court of Appeals appears at Appendix A to the petition and is reported at unknown.

JURISDICTION

[X] For cases from federal courts. The first case 00-7156 ended in a writ of mandamus dated December 4, 2000, with no action on the part of the Veterans Administration. The date on which the United States Court of Appeals decided my case 01-7067 was November 15, 2001, appeal dismissed. The petition for appeal order of 01-7067 was denied on January 17, 2002.

STATUTORY PROVISIONS INVOLVED

5th, 14th Amendments Right to Life, Due Process Clauses, Title 18 USC 1503, 1505, and 2071, 38 USC 501, 38 USC 1151 and 7292, 38 CFR 3.154, 3.156, 3.358, 3.400 and 3.802 are set fourth in Table of Authorities.

STATEMENT OF CASE

The Plaintiff is under a wrongful death sentence by the VA. The VA with knowledge and forethought neglected to treat the plaintiff for Hypertension, Angina and Coronary Artery Disease (CAD), on 24 Jul 1974. The VA also committed Fraudulent Conspiracy from 24 JUL 1974 to present date. The VA's Dr. Gallogly had sufficient evidence within the plaintiff Service Medical Records (SMR) to find the above diseases present. The wrongful death sentence could not be defined statistically until the five-vessel bypass was preformed, on 13 MAR 1997. This operation will last about 7 years, since; veins used will last 7 years "mean time". The chance of living after the next heart attack is less than 19%. The plaintiff is suffering from angina attacks presently. In-Accordance-With (IAW) Social Security actuary tables (Lodge No.6), presently the plaintiff's life expectancy is 90.5 years of age or until the year 2026, but because the VA neglected to treat the existing heart condition, the plaintiff's life expediency is 67 years or until the year 2004 IAW American Heart Association (AHA). The VA has taken a possible 19.5 years from my life without due process.

A STATEMENT OF ISSUES

Points of Agreement

The plaintiff was on active military duty between OCT 1953 and 31 MAY 1974. The VA, USAF and plaintiff agree that there was no evidence of heart disease or coronary artery disease during the active service time between OCT 1953 and 31 JAN 1966, therefore, no precondition for the diseases was present. The VA agrees with the Plaintiff that Hypertension, Angina and CAD's stared on active service time.

Points of Disagreement

In the final decision of the FCC on 15 NOV 2001 (Pl. Exh. No. 2) the court brought up 38USC7292 (a) Supp. 2001. The plaintiff would respectfully remind the court that this case is about the regulations that were in effect on 1 JUN 1974, the date the law was broken IAW Russell v. Prinpi 3 Vet App. 310-314 (1992).

The Plaintiff would like to point out the present case in front of the court started BVA 98-11982 before any Supp. 2001. As far as non-treatment is concerned this does not concern section 1155. Disability should be awarded retroactive to 1 JUN1974 at a 100% rate IAW Dr. Chavez, who is a certified cardiologist specializing in diagnostics who the plaintiff enlisted to review his entire medical records and make a diagnosis, (Lodge No. 22). The pertinent VA operating instruction is M21-1, Part VI, Para. 2.07b (Lodge No. 15). The VA has stated in that Rating Decision (Lodge No. 1) dated 13 JUN 1997, effective date 6 AUG 96 that the plaintiff was Service Connected for Arteriosclerotic Heart Disease with M.I. and Angina; Hypertension. This position of the VA violates 38 CFR 3.400, 1st paragraph, since the plaintiff filed the original claim, on 24 JUL 1974, well within the one year prescribed by VA law, and should be corrected under CUE to effective date 1 JUN1974 IAW 38 CFR, 3.400, Disability rate at 100% IAW Dr. Chavez's expert testimony.

Clear Unmistakable Error, New And Material Evidence
In-Accordance-With (IAW)
38 USC 501 or 38 CFR 3.156 & 3.400 (2)(q)(i)(ii)
Injury Due To Lack Of Treatment
IAW 38 USC 1151, 38 CFR 3.154, 3.358, 3.400 (4)(i), and 3.800

Since the VA has made a mockery out of the Constitution and other statutes in so many cases, the plaintiff will only address the following: **(A)** The evidence within the Service Medical Record (SMR) that was available to the VA on or about 14 JUN 1974. **(B)** Dr. Gallogly (VA disability rating doctor), **(C)** Dr. Richtsmeier (VA disability rating doctor), **(D)** CVAC Case No. 96-0212. **(E)** Rating Decision Dated 13 JUN 1997. **(F)** Dr. Chavez's letter dated 14 AUG 1977. **(G)**, Memorandum Decision Case No 96-0212, Brainerd Medical Report. **(H)** Present case before the Supreme Court of the United States, BVA Case No. 98-11982, which became Federal Circuit Court (FCC) No. 00-7156 & 01-7067.

The VA is a combination organization that controls all records and SMR that are presented to courts. The judges and staff workers are paid and promoted by the VA. The VA controls the

amount of monies awarded without any path of rebuttal for the veteran i.e. Dr. Gallogly's fraudulent testimony and Rating Decision Dated 13 JUN 1997 made by a Rating Specialist who is unqualified to read an ECG's v. Dr Chavez (Cardiologist).

(A) Within the plaintiff Service Medical Records (SMR): On 31 JAN 1966, (Lodge No. 23) the plaintiff suffered a positive ECG for Coronary Insufficiency attack with the following symptoms: acute pain in the chest radiating into left arm, marked shortness of breath, one hour in duration, pain was so severe to double the plaintiff up, pain radiated into his neck, pain on expiration and inspiration, heart had an irregular rhythm, tones were distant, there was an occasional extra systole present and pulmonary obstruction, hospitalization at Aberdeen Hospital on 31 JAN 1966 (Lodge No. ~~23~~ 5) and then was moved to Columbus AFB. On 8 OCT 1974 the plaintiff suffered an angina attack (Lodge No. 10) one hour in duration and was hospitalized to "rule out acute myocardial infarction" at Blytheville AFB, (Lodge No. 10). The last seven months on active duty the plaintiff's average blood pressure was 163/106. On 21 JAN 1974, the plaintiff had a positive ECG for Coronary Ischemia and another high blood pressure reading of 159/100. None of the above records were considered in any cases or rating decisions made by the VA but meet the requirements of 38 USC 501, 38 CFR 3.156 and 3.400 for the date:

> "New and material evidence not previously submitted to agency decisionmakers which bears directly and substantially upon the specific matter under consideration...must be considered in order to fairly decide the merits of the claim."
>
> "A determination that there was CUE must be based on the record and the law that existed at the time of the prior decision. IAW Russell v. Principi, 3 Vet. App. 310 314 (1992)"

Therefore, the law should be dated back to 1 JUN 1974.

(B) On 7 AUG 73, the day of the plaintiff's USAF Retirement physical, the plaintiff requested a VA "original service connected" type disability evaluation. The VA granted that

request on or about 24 JUL 1974 with Dr Gallogly. Dr. Gallogly (Lodge 2) stated in the first paragraph that "specialistic evaluations not required", therefore, we may assume that Dr. Gallogly is qualified to read ECG's and know heart conditions since some points in this evaluation will require this training.

> "Consulting physician must exercise degree of care and skill reasonably expected of other medical professionals acting under similar circumstances." C.A.D.C. 1995. In re Sealed Case, 67 F.3d 965, 314 U.S.App.D.C. 271.

Dr. Gallogly's complete diagnosis of the plaintiff heart trouble in service was; "One episode of cramping, right peristernal chest pain, OCT 1973 associated with anxiety, mild shortness of breath and diaphoresis." Note disagreement with **(A)** above. VA Form 21-526c (Lodge 4) is evidence of two hospitalizations for chest pain. On 31 Jan 1966 the plaintiff was hospitalized in Aberdeen Hospital with chest pain and 13 other symptoms. On 8 OCT 1973, (Lodge No. 23), the plaintiff was admitted to the Blytheville AFB hospital by Dr. Choplin for: 1) "...Chest pain to rule out acute Myocardial Infarction..." 2) Blood Pressure was 190/130. A statement by the Yale School of Medicine, (Lodge No. 7) on high blood pressure: "a diagnosis of high blood pressure should not be based on a single reading except when it is extremely high for example, above 170-180/105-110." Notice both the diastolic and the systolic were above the maximum limits set by the Yale School Of Medicine. Both USAF and VA recognize the Yale School of Medicine. 3) Right parasternal chest pain; 4) Cramping in nature associated with shortness of breath; 5) Diaphoresis (sweating); 6) One hour prior to admission; 7) The plaintiff was given 100mg of Demerol for pain; 8) A Blood pressure of 190/130 by the plaintiff is hypertension; 9) The plaintiff was given a prescription of Valium upon discharge. Dr. Gallogly stated that the plaintiff had "mild shortness of breath and the attack was caused by anxiety", both are perjured statements. IAW the AHA and Dr. Chavez, any blood pressure greater than 140/90 is essential hypertension and IAW Yale School of Medicine a reading of 190/130 is hypertension without taking any other readings and requires treatment. Dr. Chavez stated in his report:

> "On [21 JAN 1974], however, revealed 2mm of ST segment depression in leads II and aVF and 3mm in V5 (this was noted on the Electrocardiographic (Lodge 9).[19] This would [be] consistent with objective evidence for coronary ischemia."

Dr. Chavez's letter was hand carried to RO St. Paul and dated 9-17-97 on the lower right hand corner of first page well within the 1 year requirement of 38 CFR 3.155.This also meets the requirement of 38 CFR 3.156 and 3.400. It also shows Gross or Negligence on the part of the VA. LODEE 22

> "New and material evidence not previously submitted to agency decisionmakers which bears directly and substantially upon the specific matter under consideration...must be considered in order to fairly decide the merits of the claim. 38 CFR 3.156"

Dr Gallogly had within the SMR for two positive ECG's (CAD), Hypertension and Angina attack and failed to treat the plaintiff.

> "C.A. (Ill.) 1986 In Illinois, physician or heath care provider has duty to disclose to patient those risks which are foreseeable. Boruski v U.S. 803 F.2d 1421."

The VA violated the plaintiff's rights IAW 5, 14 Amendments, Right to Life and Due process clauses, 18 USC 1035 (False statements), 1503 (Influencing), 1505 (Obstruction), and 2071 (Concealment). However, the requirement for CUE 38 USC 501, CFR 3.156 & 3.400 (2)(q)(i)(ii) has been met. The VA also violated 38 USC 1151, 38 CFR 3.154, 3.358, 3.400, and 3.800 covering Disability Due to Hospitalization, Non-treatment and Injury due to lack of care. Because of the VA gross negligence, in failing to treat Hypertension, CAD and Angina diseases, plaintiff's life span will be shorten and a wrongful death will take place (against 5, 14 amendment right to life). This has caused pain and suffering to an innocent family members and a Myocardial Infarction, a five vessel by-pass, two angioplasties,

an unstable sternum and worst of all, non-treatment of two deadly diseases (Hypertension, CAD and a minimum of 50 angina pectoris attacks).

> "18.80 (9), Gross or Negligence and matter of common knowledge, W.D.Pa. 1987,under Pennsylvania law, to satisfy burden of showing that the defendant failed to exercise reasonable skill and knowledge required under circumstances must introduce expert medical testimony to show defendant's conduct varied from accepted medical practice, unless matter under investigation is so simple, and lack of skill or want of care so obvious, as to be within range of ordinary experience and comprehension of even nonprofessional persons. Geibel v. U.S., 667 F.Supp. 215, affirmed 845 F.2d 1011."

This is also the starting date of Conspiracy (Craig v. U.S, C.C.A.Cal. 81 F2d 816, 822) to commit a Fraud (Goldstein v. Equitable Life Assur. Soc. of U.S. 160 Misc. 364 289 N.Y.S. 1064,1067). Dr. Gallogly is the first member of the fraudulent conspiracy chain. Quote IAW BLACK'S LAW DICTIONARY #1 Fraudulent; #2 Conspiracy:

> #1 "To act with "intent to defraud" means to act willfully, and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to ~~anther~~ ANOTHER, or bringing about some financial gain to oneself."
>
> #2 "A conspiracy may be continuing one; actors may drop out, and others drop in; the details of the operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. Craig v U.S.C.C.A. Cal., 81 f2d 816 822."

(C) Dr. Richtsmeier, a VA compensation pension doctor saw the plaintiff on 12 DEC 1989. In the Diagnosis in Section: #5, the doctor stated "Elevated BP" (~~Pl. Exh. 3~~ PAGE 24). This is the very first time that the VA stated anything about Elevated Blood pressure. This meets the requirements of 38 USC 501, 38 CFR 3.156, 3.400:

> "New and material evidence not previously submitted to agency decisionmakers which bears directly and substantially upon the specific matter under consideration...must be considered in order to fairly decide the merits of the claim. 38 CFR 3.156"

Note the CAVC could not locate this evidence. However, Dr. PAGE 24 Richtsmeier did not treat Hypertension, Angina or CAD or inform the plaintiff of his deadly illnesses.

> "C.A. (Ill.) 1986 In Illinois, physician or heath care provider has duty to disclose to patient those risks which are foreseeable. Boruski v U.S. 803 F.2d 1421."

Dr. Richtsmeier did have access to plaintiff's SMR and all VA medical records. Therefore, the VA violated CUE: 38 USC 501, CFR 3.156 & 3.400 (2)(q)(i)(ii). The VA violated Disability Due to Hospitalization; 38 USC 1151, 38 CFR 3.154, 3.358, 3.400, and 3.800, non-treatment and Injury due to lack of care., by non-treatment of those two silent killers, causing a shorter life span (violates Constitutional amendments 5, 14, right to life and due process clauses). Dr. Richtsmeier is the second member of the fraudulent conspiracy chain.

(D) CAVC CASE No. 96-0212. In All Cases the VA states an automatic disclaimer under; "FINDING OF FACT"; "All relevant evidence...has been obtained by the RO." The VA violated 38 USC 501, 38 CFR 3.156 & 3.400 (2)(q)(i)(ii) where New and Material Evidence was presented, seven different pieces of evidence. The VA did not use all material evidence that was in their possession i.e. 1st or 2nd positive ECG in the SMR, therefore, violating court procedures and 18 USC 1035 (Making

false statements), 1503 (Influencing), 1505 (Obstruction), and 2071 (Concealment).

> 2) "Cardiovascular disease, including hypertension, angina, and a myocardial infarction, was not manifest during active service, on service separation examination, during the initial postservice year, or for many years following final service separation."

The VA did not show that CAD, Hypertension and Angina (IAW Dr. Chavez) were present within my SMR that the USAF presented to the VA at the Retirement. 3)

> "The record [Service Medical Record] SMR contains no competent medical opinion or authority which links or relates the veteran's current cardiovascular disease...to any...clinical finding during his period of active [military service] duty."

The CAVC personnel for Case No. 96-0212 are the third members of the fraudulent conspiracy chain. Dr. Chavez met these requirement in **(F)** below; (1) Condition at the time of discharge, (2) present condition (3) and nexus between those two conditions, IAW Anderson, supra; Caluza v. Brown, 7 Vet.App. 498, 506 (1995). Aff'd 78 F.3d (Fed. Cir.)(Table).

(E) Rating Decision 13 JUN 1997; The VA used one argument in this rating decision:

> "The record contains no competent medical opinion or authority which links or relates the current cardiovascular disease...to any...clinical finding during his period of active service."

Either the VA laypersons or doctors were not competent enough to read ECG's, Hospital reports, or they chose to ignore them. Had someone competent reviewed plaintiff's SMR, his disability would have been effective 1 JUN 1974 by Dr. Gallogly. Dr. Chavez's rebuttals to the above false charges are below in **(F)**.

The CAVC personnel for Rating Decision are the fourth members of the fraudulent conspiracy chain.

(F) The Plaintiff gave Dr. Chavez evidence from the SMR only and asked him to make a diagnosis that will show the plaintiff's condition at the time in service. Dr. Chavez reviewed the records and gave this testimony:

> "was hospitalized on 9 FEB 1997 with unstable angina; underwent an angioplasty…on February 11 1997; On March 10,1997 was hospitalized on unstable angina underwent a five vessel by-pass on March 13, 1997; disunion of sternum."

In the below paragraph Dr. Chavez will refute and negate all VA Court cases to include but not limited to, Memorandum Decisions and Rating Decisions back to 1 JUN 1974. This paragraph will state there was sufficient component medical records and test within the plaintiff SMR to conclude that Hypertension, CAD and Angina, without any treatment did contribute to the plaintiff's coronary disease and shows nexus between 1974 v present day:

> "In review of the rating decision mention above, there does seem to be a contradiction in the reasons and basis section, paragraph #2 explaining the reason for denial in my review of the medical records Specifically, it states in that 2nd paragraph that the record contains no competent medical opinion or authority that links or relates the veteran's current cardiovascular disease to any clinical finding during the period of his active service. However, in my review it is clear that Mr. Krueger had essential hypertension. This began back on 16 DEC 1969, when his blood pressure was 154/100…At the time of his admission on 8 OCT 1973 his blood pressure was 190/130. This is documented on a clinical record dated 8 OCT 1973, when he was admitted with chest pain (as seen in Exhibit D). He was ruled out for myocardial infarction. He had normal enzymes. He was in the hospital between October 8 and October

11...He apparently underwent both a single and a Double Master test...the Double masters test on [21 JAN 1974], however, revealed 2mm of ST segment depression in leads II and aVF and 3mm in V5 (was noted on the Electrocardiographic Record seen in Lodge 8). This would [be] consistent with objective evidence for coronary ischemia...I do find it curious that one double masters test had objective evidence of coronary ischemia on that study. The mere absence on a subsequent study simply reflects the dynamic nature of coronary artery disease (CAD's)...Given his symptoms of angina and one abnormal exercise treadmill study, I think it would have been reasonable to perform a cardiac catheterization at that time to exclude and evaluate his chest pain formally. He underwent a cardiac consultation and was given a provisional diagnosis on the base of his Double Master test of "coronary artery disease. During that cardiology visit [12 FEB 1974] his blood pressure was 155/95. Although no formal diagnosis of hypertension was made at that time, this was an error, ...and the evidence of elevated blood pressure above 140/90 on several occasions, in my opinion, establishes a diagnosis of hypertension ...In my opinion, Mr. Krueger should have had the diagnosis of hypertension made in 12 DEC 1969 and it certainly should have been made when he was admitted on 8 OCT 1973. Since he has been following with me, he has always been treated for hypertension. In my opinion that hypertension did contribute to Mr. Krueger's coronary disease...I would have to agree with Mr. Krueger's opinion that his 100% service connection should be awarded back to his date of separation [1 JUN 1974]...should have had the diagnosis of hypertension made in DEC 1969..."

The VA and Department of Justice has known about Dr. Chavez's letter since Sept 1997 and has yet to refute any of the statements within his letter, therefore, they are no longer supposition but are facts. The above letter from Dr. Chavez meets or exceeds requirements in "Effective Dates 38 CFR 3.400

General ...compensation based on an original claim...the date entitlement arose...(ii) date entitlement arose, if claim is received within 1 year after separation (31 MAY 1974) from active duty (24 JUL 1974 was the date the VA gave the plaintiff a physical for heart conditions, therefore, the date claim arose was well within the year required after separation, thus, the date of starting VA disability would have been 1 JUN 1974)...(q) New and material evidence (38 CFR 3.156) New and material evidence not previously submitted to agency decisionmakers which bears directly and substantially upon the specific matter. On 14 AUG 1997, the VA had within its possession Dr. LODGE 22
SEE LOWER RIGHT CORNER Chavez's letter but refused to present or evaluate that letter as required by court procedures. "Consideration...must be considered in order to fairly decide the merits of the claim." (i) Receive within appeal period or prior to appellate decision."
(G) Memorandum Decision dated 19 NOV 1997 of CAVC Case No. 96-0212, Note: Both Rating Decision dated 13 JUN 1997 and Dr. Chavez's letter 14 AUG 1997 were in evidence before the file date of the Memorandum Decision. Dr. Chavez's letter negates the false statements made in the Memorandum Decision. The VA retrieved the following Brainerd Medical Report (Lodge 3). The VA mutilated the report and falsified the dates were presented to all Courts including the Supreme Court of United States as truth. Black's Law Dictionary: "Material Alteration. An act done upon an instrument by which its meaning or language is changed. UCC 3-407" The record that CAVC submitted to all courts is located in CAVC No. 96-0212, Table of Contents R 363. Within this report the VA had eight counts of perjury.

CAVC received this;			CAVC submitted this to all courts;
5/2/94	110/60		5/2/94 110/60
3/7/94	120/70		3/7/94 120/70
2/16/94	152/70		2/16/94 152/70
11/2/93	140/80		11/2/93 140/80
7/20/93	126/68		7/20/93 126/64
6/23/93	112/64		6/23/93 112/64
5/28/93	202/106	M.I.	5/28/93202/106
3/29/93	180/112		BLACK OUT

12/17/91	170/98	BLACK OUT
12/3/91	160/86	BLACK OUT
9/25/91	199/104	BLACK OUT
11/20/90	148/84	
7/12/90	170/96	BLACK OUT
6/25/90	172/96	BLACK OUT

The CAVC personnel for the Memorandum Decision are the fifth members of the fraudulent conspiracy chain. In the Memorandum Decision Case No. 96-0212, Page 3, line 14.

> "The veteran submitted blood pressure readings from the Brainerd medical Center which listed blood pressure readings from NOV 1990 to MAR 1994 as 148/84, 202/106, 112/64, 126/68, 140/80, 151/70, 120/70 and 110/60."

The veteran did not present this false information. Notice the VA stamp on a good copy (not blacked out) when the VA received the information. The VA presented this false statement; therefore, one more count of perjury can be added to the above false comment. The reason for the above deception by the VA; (1) Before my M.I. the VA was my primary health provider, therefore, is required to review the civilian doctors records before payment is made. (2) The VA was responsible to see that the provider is giving proper medical care. The VA did not. (3) Notice that the average blood pressure before the Myocardial Infarction is blacked out except 148/84. (4) Notice the actual average blood pressure before the Myocardial Infarction; 172/96, 170/90, 148/84, 199/104, 160/86: the average was 171/96 over a 3-year period. The VA committed perjury in the writing of the Memorandum report (Lodge 16). (5) Notice the VA should have been treating the plaintiff for hypertension long before the plaintiff had a M.I. Black's Law Dictionary;

> "Exemplary or punitive damages. In cases in which it is proved that the defendant has acted willfully, maliciously, or fraudulently a plaintiff may be awarded exemplary damages in addition to compensatory or actual damages."

The CACV acted willfully, maliciously, and fraudulently with forethought in the destruction of material evidence and committing criminal conspiracy. The plaintiff has met every regulation to have payment for non-treatment of Hypertension, CAD and Angina IAW 38 USC 1151, 38 CFR 3.154, 3.358, 3.400 (4)(i), 3.800. The plaintiff also has met every regulation for Clear Unmistakable Error, with New And Material Evidence 38 USC 501, CFR 3.156 & 3.400 (2)(q)(i)(ii) starting 1 JUN 1974. The VA did not follow court procedures by violating 18 USC 1035 (Making false statements), 1503 (Influencing), 1505 (Obstruction), and 2071 (Concealment).

These acts of perjury on the part of the VA were not noticed by the plaintiff until CACV Case No. 96-0212, filed 18 FEB 1997, page 5, last sentence in paragraph 2; "a report of medical history completed by the veteran in May 1973 denied any history of a heart condition or high blood pressure." The question on the Dental Patient Record (Lodge 9), AF form 696, dated 29 May 1973, was "Have you ever been treated for a heart condition, high blood pressure or any prolonged illness such as diabetes, kidney disease, ETC.?" On the form there was a place to check yes or no. The plaintiff checked no. The plaintiff did not say he didn't have heart disease. He said he had not been treated for heart disease. The plaintiff began to study the decision more closely and found numerous errors. Again (blacked out BP's above), the VA receives the correct report changes it and then present it to all courts.

This portion of the case is about wrongful death. The VA should presently pay for plaintiff's pain and moral suffering, disability and any accompanying mental and physical anguish, I.E. The cardiac doctors called the family together to inform them of the impending death of the plaintiff shortly after the five-vessel bypass. This caused emotional pain, grief and sorrow and would have deprived plaintiff's family of care, comfort and consortium, happiness of association maintenance, support, advice, loss of society, companionship, loss of assistance and service to the family. The plaintiff has an unstable sternum, which means the sternum did not heal back together after the five-vessel bypass. My chest wall (under the skin) is still open from the neck to the

stomach causing pain when the plaintiff: A) turns his head. B) turn on his side C) coughs D) laughs E) breaths deeply F) must sleeps in a chair G) plays with his great grandsons, etc. The doctor stated "protect your chest; at all times since your chest wall is not doing it." Presently the plaintiff is suffering from angina attacks again. The Statistics of heart disease from the American Heart Association are: Heart attack will cause 33 1/3% deaths after one Heart Attack, and Stroke will kill another 17 1/3% immediately. Another 27% will die within one year due to the disabling damage done to organs within the body. In a bypass operation a vein will last 7 years "mean time" and an artery will last 10 years "mean time". Since most of the harvest came from legs ~~and arms veins~~ already, therefore, the doctors will have a hard time harvesting vessels to help me out if the plaintiff needs bypass surgery. In March 1997, the plaintiff had a five-vessel bypass. The plaintiff could not find a correlation between numbers of bypasses v. death rate. There should be a delta between the number of vessels of a bypassed, since one would be less evasive than five. The plaintiff should have another heart attack about March 2004. This next heart attack plaintiff will have less than 19% chance to live. Due to the damages already done by the VA's non-treatment (from 24 JUL 1974 to May 1993 M.I.), the plaintiff's chances to live are less. Presently the Social Security actuary tables (Lodge No. 6) state that the plaintiff should live until 90.5 years old. Therefore, the VA has taken away about 17.5 years of plaintiff's life without due process. The VA also committed fraudulent conspiracy to keep the plaintiff from collecting an extraordinary debt due him.

> "When is process due. The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss'...and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Goldberg v Kelly, 397 U.S. 254, 262-63 (1970),(quoting joint Anti-Fascist Refugee Committee v. Mc Grath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring))."

OVERVIEW

This case is about following laws and regulations to include but not limited to 5th, 14th Amendments, Right to Life and Due Process Clauses, and violation of 18 USC 1035 (False Statements), 18 USC 1503 (Influencing), 18 USC 1505 (Obstruction) and 18 USC 2071 (Concealment). With the result of Conspiracy to commit a Fraud. The VA does not respect its own laws and regulations. The VA ignores all evidence that strengthens the veterans case and they create false evidence as located in this document. The Department of Justice and VA have ignored Dr. Chavez's testimony and other medical records, which clearly fits the definition of CUE. The Department of Justice and VA obviously did not read the plaintiff's presentation of evidence to the BVA Case No. 98-11982. The first twelve pieces of evidence fits 38 USC 501, 38 CFR 3.156 & 3.400 (2)(q)(i)(ii) or 38 USC 1151, CFR 3.154, 3.358 or 3.400 (4)(i) and 3.800. The below evidence shows that the VA has broken a minimum of 50 statutes i.e. Constitutional Amendments 5, 14 Right to Life, Due Process Clauses, and did not follow court procedures by violating 18 USC 1035 (Making false statements), 1503 (Influencing), 1505 (Obstruction), and 2071 (Concealment).

The following will prove Conspiracy (if a medical opinion is needed see Dr. Chavez's letter). This was given to BVA to evaluate for CUE and non-treatment for two deadly diseases: (1) Aberdeen Hospital Report first Positive ECG and eleven different faulty heart symptoms (Lodge No. 23), these two items were ignored by the VA. (2) Dental Report, 29 MAY 1973 (Lodge 9), this report was perjured by the VA. 3) Blytheville Hospital report 8 OCT 1973 (Lodge No. 10) (3), a blood pressure of 190/130 hypertension by itself IAW Yale School of Medicine (~~Pl. Exh.~~ 5 pdf 7). (4) Second Positive ECG for Coronary Ischemia, Report 21 JAN 1974 (Lodge 8), was ignored by the VA. (5) The VA Inspector General does not have any power correct any mistakes made by the VA court system therefore, no legal checks and balances (Lodge No. 11), (6) VA Form 21-526e (Lodge 4), shows two hospitalizations for chest pain. The VA

ignored their own reports. 7) Dr. Gallogly, VA doctor did not report 2 positive ECG's, Hypertension or angina, 24 JUL 1974 (Lodge 2). (8) Dr. Richtsmeier's VA doctor 12 DEC 1989 (~~Pl. Exh. 5~~ Lodge 24) did report elevated blood pressure, however, did not report CAD's or Angina. (9) Brainerd Medical Center Report (Lodge 3) with and without VA's mutilation, willful perjury seven times. (10) Rating Decision 13 JUN 1997 (Lodge 1), rating specialist violated 38 CFR 3.400 by not considering all the evidence available to him. (11) Dr. Peterson's Letter 26 JUN 1996 (Pl. Exh. 5), (12) Dr. Chavez's Letter (~~Pl. Exh. 15~~ Lodge 22), dated 14 AUG 1997 is the strongest evidence since it presents present heart condition, heart condition at retirement and nexus between the two period. (13) Memorandum Decision 19 NOV 1997 (Lodge No. 16), did not mention the 2 positive ECG's, the Aberdeen Hospitalization (Lodge No. 23) with 11 different faulty heart symptoms. (14) Yale School of Medicine Report on High Blood Pressure, (Lodge No. 7). (15) 18 USC 1035,1503, 1505 and 2071, (16) Public Law 105-111 (this carries the VA decision to 1 JUN 1974.) (17) House of Representatives Report 105-52. Numbers 1) thru 13) Proves Cue. The Department of Justice only mentioned Dr. Chavez's letter and did not consider the additional evidence. The VA has created an extraordinary debt by ignoring the VA regulations and has been unjustly enriched:

> "Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. Hummel v. Hummel, 133 Ohio St. 14 N.E.2d 923, 927."

(H) Present case before the Supreme Court of the United States, BVA Case No. 98-11982 (Lodge No. 13), that became Federal Circuit Court (FCC) No. 00-7156 & 01-7067. The BVA did not evaluate the list of New and Material Evidence as listed in the OVERVIEW located in the preceding paragraph above in **(G)**. The VA personnel for the BVA Case No. 98-11982 are the sixth members of the fraudulent conspiracy chain. Dr. Chavez's letter will be sufficient to negate the BVA Case and the Department of Justice agrees with me. In the Attachment section of Department

of Justice letter dated 27 OCT 2000, BVA Case file date 18 Apr 2000 (Lodge No. 13), in the borders of page -6-were written "but you have received new evidence within appeal period", further down on the same page, when referring to a statement in the BVA case No. 98-11982 "no evidence submitted subsequent to its Jan 1996 denial" in the border there was evidence IAW Dept. of Justice "wrong Chavez" (Lodge No. 13).
As the Supreme Court of the United States evaluates the preceding paragraph, there is more than enough evidence to show Hypertension, CAD and Angina within active service time and non-treatment of the two deadly diseases, effective 1 JUN 1974. The VA agreed with this when the VA found me "Service Connected" for the same diseases in Rating Decision dated 13 JUN 1997 (Lodge No.1), however, the VA did not apply 38 CFR 3.400 to make this decision retroactive to 1 JUN 1974. In the "Conclusion Of Law" section, BVA Case No. 98-11982; (1) "...effective date earlier than 6 AUG 1996...have not been met." Look at 38 CFR 3.400 (2) IAW 38 U.S.C. 7111 IAW GPO the effective date is "on or after 21 NOV 1997". The law 7111 was not in effect on 24 JUN 1974 the effective date in question. On page 6 in the 1st paragraph VA ignored the Cardiologist report of Dr. Chavez that states 100% disability effective 1 JUN 1974.

> "A determination that there was CUE must be based on the record and the law that existed at the time of the prior decision. IAW Russell v. Principi, 3 Vet. App. 310 314 (1992)"

Dr. Chavez was given medical service records and negated Dr. Gallogly statements and the subsequent decision made by the Rating Board. This Case has been before the VA since 24 JUN 1997 with the effective date of 1 JUN 1974, about 30 years. All the VA still refuses to acknowledge the overwhelming evidence. In this case the plaintiff has not gone before a tribunal to be heard (VA, FCC).

> "...due process requires an opportunity to be heard at a meaningful time and a meaningful manner. USCA Const, Amend 5,14. Paterson v Coughlin. 761 F.2d

certiorari denied 106 S.Ct 879, 474 U.S. 110'88 L.Ed.2d 916."

The plaintiff's case is so strong the FCC issued a writ of mandamus (Pl. Exh. 3). The only way out for the VA was to fabricate a false untimely condition.
On 3 JUL 2000, the Plaintiff wrote a letter #1 (Lodge No. 25) notice of appeal (NOA) and a short brief to CACV to have BVA Case No. 98-11982, file date 18 APR 2000 to be docketed for CUE and Injury Due To Lack Of Treatment.
On 6 JUL 2000 the CAVC received the plaintiff's letter #1 and short brief IAW date stamp on both items (Lodge No. 12).
CAVC wrote a letter #A (Lodge 12) that was received by the plaintiff on 13 JUL 2000. . Mr. Comeau made a decision that BVA Case No. 98-11982 did not have any "new evidence". This letter from Mr. Comeau (CAVC) Clerk informed the plaintiff (Lodge 12) "...you cannot do that now." Mr. Comeau returned all papers that the plaintiff sent to CAVC.
On 13 JUL 2000, the plaintiff called Mr. Comeau to inform him that the plaintiff had constitutional rights to petition CAVC. Mr. Comeau informed plaintiff that: "You don't have any constitutional rights as far as the VA is concerned." The plaintiff wrote this down since it was such an outlandish statement coming from a member of any court. The CAVC Clerk violated the following at a minimum: (1) FED. Rules Civ. 5(e), 28 U.S.C.A. (2) House of Representative Report, No. 105-52. "... There is no true finality of decision since the veteran can reopen a claim at any time merely by the presentation of new and material evidence." IAW VA law the Plaintiff had 120 days to send a NOA to the VA. This was met in 80 days IAW date mark on plaintiff request dated 3 JUL 2000 (Lodge No. 25); therefore, the plaintiff was timely.

On 13 JUL 2000 the plaintiff wrote a letter #2 (NOA) to have his case moved to the Federal Circuit Court (FCC) with a $105.00 check for docket fee to the FCC (Lodge No. 26). The plaintiff felt that he did comply with all requirements including the requirement of the FCC to go through the CAVC first before petitioning the FCC. The plaintiff could not get a clerk to read

what was presented to the court. There was no alternative except going to the next higher court. On 25 JUL2000 the CAVC clerk then forwarded my notice of appeal to FCC clerk, Jan Horbaly, with a cover letter #B stating that I was untimely, even though this was perjury on the part of the CAVC clerk. The CAVC did follow court procedure, by sending the notice to the FCC where my case was located. The CAVC clerk illegally limited the appeal to the decision listed as BVA Case No 96-0212 that was part of the CUE at issue, plainly written on the NOA sent to the CAVC on 3 JUL 2000. 1st line was:
Reference: DOCKET NO. 98-11982
C 26 008 438
2nd line was:
SUBJECT: Clear and Unmistakable Error (CUE)
Halfway down the page, in bold cap letters, was the following:

FACT OF COVA CASE NO. 96-0212
AND
MEMORANDUM
DECISION, DATED, 19 NOV 1997 THAT WERE A CUE

After paying the FCC docket fee the plaintiff received a notice of docketing.
The CAVC sent a letter to plaintiff demanding payment of $50.00 to docket my case. A "letter #3" that was written by the plaintiff in long hand was sent to FCC, on the 28 JUL 2000. The CAVC falsely claimed that the 28 JUL 2000 letter was an NOA for them, but CAVC did not notify FCC IAW court procedure.
The CAVC gave the plaintiff a Docket N0. 01-1 file Date 25 APR 2001. The plaintiff never had any communication with CAVC after CAVC refused to accept BVA Case No. 98-11982 and wrote a letter of NOA to FCC. Within this order the CAVC Judge Green states:

> "for some unknown reason, counsel for the Secretary was unaware that the 28 JUL 2000, NOA had been filed. Moreover, the appellant apparently did not inform the Federal Circuit that he had filed a timely appeal...he

> failed to pay the filing fee or motion to waive filing fee..."

The reason the plaintiff did not pay any fees or write "letter #3" to or for CAVC, he was not required to by court procedure and he did not want to add any credence to CAVC false charges. The plaintiff did not contact the CAVC since VA was out of his chain of command being a lower court (court procedure), and therefore, CAVC should have contacted FCC for any communications to the plaintiff. However, "counsel for the Secretary" was aware and the "Federal Circuit" was aware of the CACV false docketing. The plaintiff did contact the FCC and Department of Justice about this matter through FCC Judge Michel (Lodge No. 21) on 17 SEP 2000. The plaintiff would not receive any benefit to contact the CAVC with a NOA; his case was docketed at FCC. One more charge of perjury against the CAVC. The VA is a perfect example of malfeasance. State ex rel. Knabb v. Frater, 198 Wash 675 89 P.2d 1046, 1048. The plaintiff received an order from FCC Judge Michel (Lodge 20) date stamped 25 AUG 2000:

> "It appears that appeal no. 00-7156 was not timely filed. The list further reflects that judgment was entered by the CAVC on 30 JAN 1998. The list further reflects that Wilson M. Krueger Jr. filed the instant notice of appeal on 17 JUL 2000, over two years after judgment entered. See Fed. R. App. P. 4(a)(1)(B); 28 USC 2522*"

This order was date stamped 25 AUG 2000.
The plaintiff wrote a letter #4 (Lodge 21) on 17 SEP 2000 (Pl. Exh. 12) and sent it to FCC Judge Michel:

> "upon close inspection, the CAVC docket notice contain no reference to the Rating Decision, or BVA Decision case no. 98-11982. I took it to be another attempt by the CAVC clerk to sabotage my appeal...He would claim that I missed the deadline to CAVC to appeal BVA No 98-11982, effectively ending my appeal and closing my access to your court [FCC].

> Despite my timely appeal at every stage, my appeal of BVA Case No. 98-11982 is not listed with your court [FCC] and CAVC, will dismiss any appeal I now make as untimely."
> "The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. Goldberg v Kelly 397 U.S.254, 267-68 (1970)."

Since the CAVC has agreed that the plaintiff was "Service Connected" for various heart troubles in Rating Decision. "Letter #3" (Lodge No. 14) with quotation around the word refers to the 28 JUL 2000 letter that was written in long hand by the plaintiff for FCC, since plaintiff wrote a letter of NOA earlier for the FCC. The "Letter #3" was brought up by the plaintiff in his letter #4 to Judge Michel (FCC) and Department of Justice on 25 JUL 2000. The plaintiff even foretold what the CAVC would do, quote;

> "...He would claim that I missed the deadline to CAVC to appeal BVA No 98-11982, effectively ending my appeal and closing my access to your court [FCC]."

After the "letter #4" was brought up the court gave me a writ of mandamus. The plaintiff thought that "letter #3" and anything about that "letter #3) was conclude, close, dead issue, etc. Therefore, the judgment made by the FCC on 15 NOV 2001 has several errors within the document.

> "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 894-95 (1961)"

The plaintiff did not have two cases going on at the same time. After the plaintiff paid his docket fee to the FCC, he had no contact with the CAVC. Letter #4 was sent only to FCC and Department of Justice and did not include CAVC since; the plaintiff case was at FCC. IWA 38 USC 7292 "...any party to the case may obtain a review of the decision..." The BVA Judge

Powell informed the plaintiff that he could not present any new evidence BVA for judgment since, BVA can not overturn CAVC which had made a judgment in CAVC Case No. 96-0212 i.e. Dr. Chavez's letter, Aberdeen Hospitalization record 31 JAN 1966 first positive ECG report, 21 JAN 1974 second positive ECG, etc. The plaintiff has not received justice after 30 years of waiting. If the court will look at this letter closely, the "letter #3" was sent on 28 JUL 2000 and received by the CAVC on the same date. The plaintiff refused to pay docketing fee to CAVC for several reasons:

A) The plaintiff did not write the "letter #3" to be received by or to CAVC as NOA. B) The plaintiff would not break the chain of command (court procedures), habit from over 20 years in service. C) The plaintiff knows that he will never receive justice at any level of the VA and has not for about 30 years, since the VA will manipulates any law to keep a person from receiving his proper and just dues. D) The plaintiff's hands are clean. E) It would be against the law to have the same case going on at the same time in two different courts. F) The CAVC knows that this case is far from "moot". The VA owes the plaintiff an extraordinary debt in disability pay from 1 JUN 1974 thru present date of about $2000/month for non-treatment of two deadly illnesses (Hypertension, Angina and CAD). G) The only person that would receive any benefit from this confusion would be the CAVC. The FCC granted a writ of mandamus on 4 DEC 2000; Judges Newman, Lourie, and Linn of the FCC made this decision.

> "C.A.D.C. 1998 Mandamus is a drastic remedy to invoked only in extraordinary situations. Northern States Power Co. v U.S. Dept. of Energy. 128 F 3d 754, 327 U.S.App.D.C. 20. Mandamus is proper only if plaintiff has clear right to relief, defendant has clear duty to act and there is no other adequate remedy available to the plaintiff. Northern States Power Co. v U.S. Dept. of Energy. 128 F 3d 754, 327 U.S.App.D.C. 20."

The Plaintiff asked the clerk of FCC the disposition of the writ of mandamus and was informed by him that the Plaintiff had to

send $105.00 to get an answer. This is usury on the part of clerk at FCC and lack of knowledge on the plaintiff's part. The plaintiff is a Pro Se because he cannot find anyone to represent him that followed the USAF/VA and U.S. statutes/regulations. Therefore, the plaintiff is subjected to trickery and ignorance.

> "The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. Goldberg v Kelly 397 U.S.254, 267-68 (1970)."

The plaintiff sent $105.00 to FCC. The FCC opened up a new case No. 01-7067 and questioned the letter #3 sent by CAVC. The plaintiff thought the FCC was referring to the cover letter sent by CAVC accusing plaintiff of being untimely and plaintiff answered accordingly. The CAVC declared that the "letter #3" wrote on 28 JUL 2000 was their NOA from the plaintiff. This is a perjured statement made by CAVC for several reasons:
1) The CAVC did not send their request for Docket Fee thru the FCC court, which was handling the BVA Case No 98-11982 as required by Court procedure. The CAVC knew the procedure, since CAVC stated falsely that the plaintiff was untimely and sent that to FCC correctly. 2) The Plaintiff asked FCC to make an official investigation on this "letter #3" matter, on 2 JUL 2001. Nothing was done. Knowingly and willingly to face perjury charges if proven in error (Lodge 17) and willing to take a lie detector test at the plaintiff's cost. The plaintiff will pay for Mr. Comeau and Judge Greens test if they come out positive. 3) The plaintiff did give service to FCC and the Department of Justice, see plaintiff's letter 25 AUG 2000.
In light of the conduct of the CAVC clerk and employees of the VA under the direction of plaintiff's adversary, the Secretary of Veterans Affairs, plaintiff feels that he was unfairly treated. The plaintiff should have been heard in some court regarding the regional office's refusal to reopen his claim when presented with new material evidence. Instead, BVA, CAVC have refused to hear plaintiff's new [evidence]. The Plaintiff feels that the only alternative to be heard is to file through the Federal Court

System, from this point on, therefore eliminating trickery from the VA.

> "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 894-95 (1961)"

The plaintiff requests punitive damage for the actions of the VA for the last 30 years including but not limited to the court time and perjury.

> Damages other than compensatory damages which may be awarded against a person to punish him for outrageous conduct. Wetherbee v. United Ins. Co. of America, 18 C.A.3d 266, 95 Cal.Rptr. 678, 680."

The plaintiff ask the U. S. Supreme Court for help since the wrongful death sentence by the VA may soon come true.

The plaintiff would like to cover "Right to Life" under the Fourteenth Amendment in relation in relation to this case. This subject has two elements; number of years and quality of those years. Point of law:

"The right to enjoyment of life and liberty and to acquire and posses property are 'fundamental rights' of citizens of several states not dependent upon the constitution or government for their existence but this amendment although prohibitory in language, contains a necessary implication of a positive immunity or right against state action depriving a person of such fundamental rights without due process of law" Culp v. U.S. C.C.A. Ark 1942 131 F.2d

CONCLUSION

In accordance with all statutes and the constitution a writ of certiorari should be granted as of June 1, 1974.

Respectfully,
Wilson M. Krueger, Jr.

See Lodge documents (20 and 21).

See Lodge Numbers for appropriate documents.

See Lodge documents for Dr. Chavez's letter.

BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF WILSON M. KRUEGER, JR.	)	C 26 008 438
DOCKET NO. 98-11 982	)	DATE APR 18 2000

On appeal from the
Department of Veterans Affairs Regional office in Milwaukee, Wisconsin

THE ISSUE

Entitlement to an effective date earlier than August 6, 1996, for the grant of service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension, including based on a claim of clear and unmistakable error (CUE) in a January 1996 Board decision.

WITNESS AT HEARING ON APPEAL

Appellant

ATTORNEY FOR THE BOARD

John Z. Jones, Counsel

Pl.Exh. No. 1

IN THE APPEAL OF
WILSON M. KRUEGER, JR.

INTRODUCTION

The veteran served on active duty from November 1953 to October 1957, and from November 1957 to May 1974.

This matter has come before the Board of Veterans' Appeals (Board) on appeal from a rating decision of the Milwaukee, Wisconsin, Department of Veterans Affairs (VA) Regional Office (RO).

The Board notes that the veteran is unrepresented in this case as he revoked his prior appointment of the Disabled American veterans by a letter received in September 1999, and has not appointed a new representative.

FINDINGS OF FACT

1. All relevant evidence necessary for an equitable disposition of the veteran's appeal has been obtained.
2. In a January 1996 decision, the Board denied entitlement to service connection for cardiovascular disease, including hypertension, angina and a myocardial infarction.
3. A reopened claim of service connection for a heart disease was received on August 6, 1996.
4. In a June 1997 rating decision, the RO granted service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension, evaluated as 60 percent disabling from August 6, 1996.
5. In November 1997, the United States Court of Appeals for Veterans Claims (Court) (formerly known as the United States Court of Veterans Appeal) affirmed the Board's January 1996 decision.

IN THE APPEAL OF
WILSON M. KRUEGER, JR.

CONCLUSIONS OF LAW

1. The criteria for an effective date earlier than August 6, 1996, for the grant of service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension have not been met. 38 U.S.C.A. §§ 5107, 5110 (West 1991 & Supp. 1999); 38 C.F.R. § 3.400 (1999).
2. There is no legal entitlement under the law for review of the board's January 1996 decision on the basis of CUE. 38 U.S.C.A. § 7111 (West Supp. 1998); 38 C.F.R. § 20.1400 (1999).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

Initially, the Board finds that the veteran's claim is "well-grounded" within the meaning of 38 U.S.C.A. § 5107. The Board is also satisfied that all relevant facts have been properly and sufficiently developed, and that no further assistance to the veteran is required to comply with the statutory duty to assist. 38 U.S.C.A. § 5107.

Factual Background

A historical review of the record shows that a Board decision in January 1996 denied service connection for cardiovascular disease, including hypertension, angina and a myocardial infarction. The evidence of record at that time included the veteran's service medical records, which showed elevated blood pressure readings, as well as post-service private and VA clinical records, which contained diagnoses of unstable angina (April

1992), myocardial infarction (May 1993) and hypertension (May 1993).

On August 6, 1996 the RO received a statement from the veteran's representative which was construed as an attempt to reopen the claim for service connection for cardiovascular disease. Attached was a statement from Dr. D.P., dated June 26, 1999, wherein the physician opined that the veteran's blood pressure had its onset in service.

In a June 1997 rating decision, the RO granted service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension, evaluated as 60 percent disabling from August 6, 1996.

In November 1997, the Court affirmed the Board's January 1996 decision.

Pertinent laws and Regulations

A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA.
38 U.S.C.A. § 5101 (a) (West1991); 38 C.F.R. § 3.151(a) (1999).

Pursuant to 38 U.S.C.A. § 7104(b) (West 1991), when a claim is denied by a decision of the Board, the claim may not be considered based upon the same factual basis, except as provided in Section 5108 of Title 38. Under 38 U.S.C.A. § 5108 (West 1991), VA is required to reopen and readjudicate a claim when "new and material evidence" is presented or secured with respect to the claim.

IN THE APPEAL OF
WILSON M. KRUEGER, JR.

Except as otherwise provided, the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor. 38 U.S.C.A. § 5110(a). This statutory provision is implemented by regulation which provides that the effective date for compensation will be the date of the receipt of the claim or the date the entitlement arose, whichever is later. 38 C.F.R. § 3.400.

The effective date of an award of disability compensation based upon a claim reopened after final disallowance shall be the dated of receipt of claim or the date entitlement arose, whichever is later. 38 U.S.C.A.§ 5110(i); 38 C.F.R. § 3.400(r).

The effective date of grant of benefits based upon new and material evidence, other than service department records, following final disallowance shall be the date of receipt of the new claim or the date entitlement arose, whichever is later. 38 C.F.R. § 3.400(q)(l)(ii).

The provisions of 38 C.F.R. § 3.155(a) (1999) for informal claims provide that any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the VA, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within one year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

Pl.Exh. No. 1

IN THE APPEAL OF
WILSON M. KRUEGER, JR.

Analysis

As noted above, the Board denied service connection for cardiovascular disease, including hypertension, angina and a myocardial infarction in January 1996. That decision is final. 38 U.S.C.A. § 7104.

The veteran contends that the effective date for the award of service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension should be June 1, 1974, the day following separation from service. Importantly, his contention overlooks the provisions of 38 U.S.C.A. § 5110(a) and 38 C.F.R. § 3.400(q)(l)(ii), which provide that the effective date of the grant of benefits based on new and material evidence following a final disallowance (as in this case, because of the Board's January 1996 decision denying service connection for cardiovascular disease, including hypertension, angina and a myocardial infarction) shall be the date of receipt of the new claim or the date entitlement arose, whichever is later.

The claims file shows that on August 6, 1996, the RO received a statement from the veteran's representative in which he essentially requested reopening of the claim, and a statement from a private physician, dated June 26 1996, wherein the physician rendered an opinion that the veteran's high blood pressure had its onset in service. Based on this evidence, the RO, in June 1997, reopened the claim, based on new and material evidence, and granted service connection and a 60 percent rating for arteriosclerotic heart disease with myocardial infarction, angina and hypertension, effective August 6, 1996. As the January 1996 Board decision denying service connection for cardiovascular disease is final, it follows that service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension may only be granted from the date of receipt of the reopened claim. In this case, the veteran's reopened claim for service connection was received on

August 6, 1996. As such, disability compensation may not be paid from a date prior thereto.

In addition, the Board finds no evidence submitted subsequent to its January 1996 denial that would meet the requirements for an informal claim as set forth in 38 C.F.R. § 3.155. Overall, the preponderance of the evidence is negative and against the grant of entitlement to an effective date earlier than August 6, 1996, for the grant of service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension. 38 U.S.C.A. § 5107.

The Board notes that the veteran has challenged the board's January 1996 decision on the grounds of CUE. In this regard, the Board notes that pursuant to 38 C.F.R. § 20.1400(b)(l), all final decisions of the Board are subject to review on the basis of an allegation of CUE, except those that have been appealed to and decided by a Court of competent jurisdiction. In plain language, this means that once the Board's decision of January 1996 was subject to review on appeal by the Court, there is no legal entitlement to review of the Board's decision on the basis of CUE. Accordingly, the request to find CUE in the January 1996 Board decision is denied.

ORDER

An effective date earlier than August 6, 1996, for the grant of service connection for arteriosclerotic heart disease with myocardial infarction, angina and hypertension, including based on a claim of CUE in a January 1996 Board decision, is denied

(signed)
U.R. POWELL
Member, Board of Veterans' Appeals

NOTE: Pursuant to Fed, Cir, R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

01-7067

WILSON M. KRUEGER, JR.,

Claimant-Appellant,

v.

ANTHONY J. PRINCIPI, Secretary of Veterans Affairs,

Respondent-Appellee.

DECIDED: NOVEMBER 15, 2001

Before NEWMAN, Circuit Judge, FRIEDMAN, Senior Circuit Judge, and RADER, Circuit Judge.

PER CURIAM

DECISION

The appellant Krueger's appeal from the decision of the Court of Appeals for Veterans

Claims, dismissing as moot his request for extraordinary relief, is dismissed for lack of jurisdiction.

Pl.Exh. No. 2

OPINION

I

Although the facts relating to the various administrative and judicial proceedings Krueger has initiated are somewhat complex. Those necessary to understanding our disposition of this appeal may be summarized briefly.

Following his military service, which ended in May 1974, Krueger unsuccessfully tried to establish service connection for cardiovascular disease. The Board of Veterans Appeals ("Board") rejected that claim in January 1996, and the court of Appeals for Veterans claims ("Veterans Court") upheld the Board's decision. Krueger v. Gober, 96-212, 1997 WL 786993 (Vet. App. Nov. 19, 1997). On Krueger's request, however, the Regional Office of the Department of Veterans Affairs ("Regional Office") reopened the case and awarded him service connection with 60 percent disability effective August 6, 1996 – the date Krueger applied for reopening of his claim. Krueger appealed to the Board, claiming that the effective dated should be June 1, 1974 (the day after his separation from service) and that the Board had committed clear and unmistakable error.

On April 18, 2000, the Board denied Krueger's appeal, ruling that the Regional Office properly had designated August 6, 1996 as the effective date for Krueger's benefits.

In a letter to the Veterans Court, dated July 3, 2000, Krueger attempted to appeal the Board's April 18, 2000 decision. The court returned those materials to Krueger, stating that the Board's 1996 decision had become final and that if Krueger was seeking a change in that decision, based on new evidence, he should submit such evidence to the 01-7067.
Regional Office, and not to the Veterans Court. The court did not refer to the April 18, 2000 Board decision which Krueger was challenging.

Krueger than filed with this court a notice of appeal from the Veterans Court's action. He also again attempted to appeal the Board's decision, sending the Veterans Court a second letter, dated July 28, 2000, which this time the court treated as a timely notice of appeal of the April 18, 2000 Board decision. Krueger did not, however, inform the Veterans court of his notice of

appeal to this court, or this court of his second letter to the Veterans Court. Consequently, each court proceeded independently and without reference to what the other court was doing.

The Veterans court informed Krueger that his appeal had been docketed, and that he either must submit the filing fee or seek a waiver thereof within fourteen days. Krueger did neither. The Veterans Court, after issuing an order to show cause why the appeal should not be dismissed, to which Krueger again did not respond, dismissed Krueger's appeal in November 2000.

Following further proceedings in this court, we treated Krueger's notice of appeal as a petition for mandamus. On December 4, 2000, we ordered the Veterans Court to consider whether Krueger's first letter (dated July 3, 2000) had been timely notice of appeal of the Board's April 18, 2000 decision.

The Veterans court then noted that the two courts had been acting in ignorance of the other's actions. It held that because it had accepted Krueger's second letter as a timely notice of appeal and docketed (but later dismissed) the appeal, Krueger's petition for relief was moot, and dismissed it. That order, dated April 25, 2001, is the subject of the present appeal.

01-7067

II

The jurisdiction of this court to review decisions of the Veterans Court is limited to challenges to "the validity of any statute or regulation...or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision." 38 U.S.C. § 7292(a) (Supp. 2001). Except for constitutional issues, however, we cannot review "(A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case." 38 U.S.C. § 7292(d)(2)(1988).

As noted, Krueger's appeal is from the Veterans Court order of April 25, 2001, which dismissed his petition for relief as moot. The validity of that decision turns on (1) whether there remained a live controversy over the validity of Krueger's July 3, 2000 letter as a valid appeal, light of that court's acceptance of

Krueger's July 28, 2000 letter, as a timely appeal from the Board decision, and (2) whether this court's writ of mandamus required the Veterans Court to determine the validity of that earlier letter as an effective appeal. These issues involve factual determination relating to this particular case and section 7292 denies us jurisdiction to decide them. We therefore dismiss the appeal.

Pl.Exh. No. 2

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

United States Courts of Appeals for the Federal Circuit

00-7156

WILSON M. KRUEGER, JR.,

Claimant-Appellant,

v.

HERSHEL W. GOBER,
Acting Secretary of Veterans Affairs,

Respondent-Appellee

Before NEWMAN, LOURIE, and LINN, Circuit Judges.

LOURIE, Circuit Judge.

ORDER

Wilson M. Krueger and the Acting Secretary of Veterans Affairs respond to this court's

September 29, 2000 order.

Pl.Exh. No. 3

Krueger states that he is seeking review of a July 10, 2000 letter from the clerk of the Court of Appeals for Veterans Claims returning without action what Krueger considered to be a notice of appeal. In that letter, the clerk treated Krueger's submission as a request to reopen his claim and informed Krueger that he must submit his request in the first instance to the VA regional office. Krueger states that his July 3, 2000 submission to the Veterans Court was not a request to reopen a claim but rather was a notice of appeal from an April 18, 2000 decision of the Board of Veterans' Appeals (Board case no. 98-11982).

The Acting secretary responds that this court does not have jurisdiction to review the clerk's July 10, 2000 letter because that letter is not a decision of the United States Court of Appeals for Veterans Claims. The Acting Secretary states, however, that he does not oppose treating Krueger's notice of appeal as a petition for writ of mandamus, and he asserts that under the circumstances, limited mandamus relief may be appropriate.

We agree with the Acting Secretary. While this court does not have jurisdiction to review the clerk's letter, see 38 U.S.C. § 7292(a), we treat Krueger's submission as a petition for a writ of mandamus to direct the United States Court of Appeals for Veterans Claims to consider whether his July 3, 2000 decision of the Board of Veterans' Appeals. We grant the petition.

Accordingly,

IT IS ORDERED THAT:

(1) Krueger's notice of appeal, construed as a petition for a writ of mandamus, is granted. The Court of Appeals for Veterans Claims is directed to consider whether Krueger's July 3, 2000 submission to that court was sufficient to timely appeal the April 18, 2000 decision of the Board of Veterans' Appeals.

00-7156

(2) Each side shall bear its own cost.

FOR THE COURT

DEC –4 2000
Date

(signed)
Alan D. Lourie
Circuit Judge

cc: Wilson M. Krueger, Jr.
Virginia G, Farrier, Esq.

s14

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

DEC – 4 2000

JAN HORBALY
CLERK

00-7156

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

01-7067

WILSON M. KRUEGER, JR.,

Claimant-Appellant,

v.

ANTHONY J. PRINCIPI, Secretary of Veterans Affairs,

Respondent-Appellee.

ORDER

Pl.Exh. No. 4

United States Court of Appeals for the Federal Circuit

ORDER

Before NEWMAN, Circuit judge, FRIEDMAN, Senior Circuit judge, and RADER, Circuit Judge.

A petition for rehearing having been filed by the APPELLANT,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

The mandate of the court will issue on January 24, 2002.

FOR THE COURT,
(signed)

Jan Horbaly
Clerk

Dated: January 17, 2002

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
JAN 17 2002
JAN HORBALY
CLERK

cc: Wilson M. Krueger, Jr.
Virginia G. Farrier

KRUEGER V DVA, 01-7067
(CVA – 01-1)

Pl.Exh. No. 4

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Note: Pursuant to Fed. Cir. R, 47.6, this order is not citable as precedent. It is a public record

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Pl.Exh. No. 4

Riverview Clinic

580 N. Washington Street
Janesville WI, 53547-0551
608-755-3500 * 800-779-2854

June 26, 1996

Mr. Wilson Krueger, Jr.
W1343 Brooklyn-Albany Road
Albany, WI 53502

Dear Mr. Krueger

I reviewed the VA records that you brought with your appointment at your request.

As you know, our concern is to determine whether the blood pressure elevation that you have suffered was a Service-connected or Service-related illness.

The blood pressure measurements recorded between December 1969 and June 1974 (your DOS) indicate that during the time of your Military Service, specifically between 1969 and 1974, that elevated blood pressure was present. Theoretically one could claim that your blood pressure was elevated before Military Service, but I presume that would have been detected in your Military Examination at the time of Military Enrollment

To summarize, my review of the extensive records that you brought here reveal that your blood pressure was, as far as we can tell, normal at the tone you enrolled in the Military and was elevated on several occasions during your Military Service and therefore was a medical condition that was present at the time of discharge from Military Service. Therefore, in my opinion, it is more likely than not that the onset of high blood pressure took place in Military Service.

If there is any further question about this issue, please give me a call.

Sincerely,

(signed)

Daniel T. Peterson, M.D.

DTP:rw

Pl. Exh. No. 5